IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

AS.No. 665 of 1993()

OS.106/1988 of SUB COURT, KASARAGOD
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APPELLANTS - RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, KASARGOD.

2. AGRICULTURAL INCOME TAX OFFICER, IST CIRCLE, KASARGOD.

3. DEPUTY COMMISSIONER (APPEALS) AGRICULTURAL INCOME TAX AND SALES TAX, KOZHIKODE P.O.

BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU

RESPONDENT - PLAINTIFF:

K. THIMMANNA BHAT, S/O. SANKARANARAYANA BHAT, RESIDING AT PARAMOGARU IN MEENJA VILLAGE, KASARGOD TALUK, KASARGOD DISTRICT, KAYYAR P.O.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 06/07/2007 ALONG WITH AS NO. 19 OF 1994 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 665 OF 1993

AND

A.S. NO. 19 OF 1994

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Dated this the 6th day of July, 2007

J U D G M E N T

Appeal Suit No.665 is filed by the defendants in O.S. No.106 of 1988 on the file of the Sub Court, Kasargod challenging that part of the decree by which the status of the plaintiff was declared. Appeal Suit No.19 of 1994 is filed by the plaintiff in the aforesaid suit challenging the decree by which the trial court held that it has no jurisdiction to give the other reliefs sought for in the plaint.

2. Short facts necessary for the disposal of the appeals are as follows: Plaintiff's family owned certain properties in Meenja Village of Kasargod District. There was a partition in the family in the year 1958 and some properties were allotted to the plaintiff and his son. Plaintiff was the Ejman and Manager of that branch. Second defendant, Agricultural Income Tax Officer, Kasargod treated that unit as Hindu undivided family and assessed agricultural income tax. The case of the plaintiff was that from 1.12.1976 Joint Hindu

Family Abolition Act came into force and thereafter the status of the family changed and the Department cannot assess him as the Ejman and Manager of the Hindu undivided family. According to him with effect from 1.12.1976 himself and his son became co-owners of the property and he can be assessed only for his share of income. Dispute was relating to years from 1978-79 to 1982-83. The Department rejected plaintiff's contention and assessed him as an individual. Challenging those assessments plaintiff filed revisions which were dismissed. He challenged those orders in O.P. No.7327 of 1985. This Court disposed of the Writ Petition holding that the remedy available to be petitioner is to approach a civil court for declaration of his status. Recovery proceedings were stayed so as to enable the plaintiff to file the suit. Plaintiff filed a suit.

3. Defendants raised a contention that properties assessed for tax are the self acquired properties of the plaintiff which were allotted to him as per the partition deed executed in the year 1958. It was also contended that he was liable to be assessed as an individual in respect of all those properties. It was also contended that plaintiff's son in

collusion with the plaintiff filed O.S. No.82 of 1985 for partition and the decree passed in the said suit is not binding on the defendants. It was also contended that the revision filed against the impugned orders were also dismissed and the assessments have become final and conclusive.

4. Trial court considered the issue arising for consideration and found that before the commencement of the Joint Hindu Family Abolition Act the property belonged to a Hindu undivided family. It was held that there was a change in the status and a notional partition took place in the family on 1.12.1976 and thereafter the plaintiff is not liable to be assessed as a person and he can be assessed only as a co-owner. After entering into such a finding court below took a view that the orders passed against the plaintiff which were under challenge in the suit had become final and conclusive and in view of the provisions contained in Section 68 of the Agricultural Income Tax Act, civil court has no jurisdiction to set aside an order passed by the competent authority. Hence the trial court declared that the plaintiff was a co-owner in respect of the properties, but it has no jurisdiction to set aside the orders passed by the Agricultural Income Tax

Authorities. Challenging the declaration of the status of the plaintiff, defendants have filed A.S. No.665 of 1993 and challenging that part of the decree by which the trial court refused to set aside the assessment orders, plaintiff has filed A.S. No.19 of 1994.

5. Properties originally belonged to the family of the plaintiff. There was a partition in the year 1958. That is admitted by the defendants also. Exhibit A28 is the assessment order issued by the Agricultural Income Tax Officer for the year 1958-59. Exhibit A29, the revised assessment order, shows that plaintiff's father was assessed treating him as the Ejman and Manager of the Hindu undivided family. Subsequent assessment order, Exhibits A25 to A27, also show that the plaintiff was treated as the Ejman and Manager of the Hindu undivided family consisting of himself and his son and assessed to agricultural income tax. So the defendants are estopped from raising a contention that the plaintiff is the absolute owner of the property allotted to the plaintiff and his son under the partition deed executed in the year 1958.

6. Joint Hindu Family System was abolished with effect

from 1.12.1976 by the Joint Hindu Family Abolition Act. A notional partition also took place on that date. So with effect from 1.12.1976 undivided Hindu family of the plaintiff became divided in view of the deeming provision in the Statute and he along with other members have became the co-owners of the property. Exhibit A37 final decree in O.S. No.82 of 1985 also shows that properties were divided as per the said decree. So with effect from 1.12.1976 plaintiff cannot be assessed treating him as the Ejman and Manager of the Hindu undivided family. So the assessment orders, Exhibits A2 to A6 for the period from 1978-79 to 1982-83, issued by the Agricultural Income Tax Officer treating the plaintiff as head of the family is void and non-est. Bar under Section 68 of the AIT Act is only to set aside an order and not for a declaration to the effect that an order is non-est. In this case Exhibits A2 to A6 have no legal force and they are void and hence non-est and cannot be enforced against the plaintiff. The view taken by the trial court regarding its jurisdiction to grant the reliefs sought for in respect of Exhibits A2 to A6 is wrong and unsustainable. Hence the appeal filed by the plaintiff is to be allowed and the appeal filed by the defendants is to be

dismissed.

7. In the result, A.S. No.665 of 1993 filed by the defendants against the decree passed in O.S. No.106 of 1988 is dismissed. A.S. No.19 of 1994, filed by the plaintiff in the aforesaid suit, is allowed and it is declared that Exhibits A2 to A6 assessment orders issued by the AIT Officer, Ist Circle, Kasargod are void, non-est and cannot be enforced against the plaintiff.

8. Parties are directed to suffer their respective costs in both the appeals.

Civil Miscellaneous Petition No.112 of 1994 in A.S. No.19 of 1994 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 665 OF 1993
AND
A.S. NO. 19 OF 1994

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J U D G M E N T

6TH JULY, 2007